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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,607	07/24/2002	Susan Joy Cooper	JMYT-252US	5114
7590	01/10/2006		EXAMINER	
Christopher R Lewis Ratner & Prestia One Westlakes Berwyn Suite 301 P O Box 980 Valley Forge, PA 19482-0980			MERCADO, JULIAN A	
			ART UNIT	PAPER NUMBER
			1745	
DATE MAILED: 01/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/018,607	COOPER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Julian Mercado	1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-13 and 15-52.

Claim(s) withdrawn from consideration: 14.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.

13.  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Remarks*

This Advisory action is in reply to applicant's request for reconsideration submitted on December 21, 2005.

The rejection of claims 1-9 and 12 under 35 U.S.C. 102(b) based on Hausler (U.S. Pat. 3,881,957), and claims 1-13 and 15-52 under 35 U.S.C. 103(a) based on Wilkinson et al. (EP 0 736 921 A1) and Hausler, are maintained for the reasons of record. Applicant's arguments have been fully considered, however they are not found persuasive.

Applicant submits that the pyropolymer monolayer on the surface of the aluminum oxide is not a separate and distinct layer to the refractory metal oxide. In reply, this argument has been fully considered, but is found incorrect and is therefore not persuasive. The examiner asserts that, indeed, the pyropolymer monolayer is a separate and distinct layer to the alumina core. The patentees teach “[a]n electrochemical cell having a catalytic electrode which is comprised of a refractory oxide having a surface area from 1 to 500 square meters per gram, and a carbonaceous pyropolymer forming at least a *monolayer* of said refractory oxide. (emphasis added) See col. 3 line 6-11, col. 7 line 1 et seq. It is this outer layer at the alumina surface, and not the alumina core, that is made conductive, “the sharp rise in conductivity of the coated refractory oxide is likely due to carbonium ions reacting with the surface species to form thermally labile mobile charges.” See col. 8 line 23-26. While the pyropolymer layer is conductive, the alumina support is maintained non-conductive. (examiner note: the combination gives rise to the disclosed “semi-conductive” property) The catalyst in Hausler is maintained as being supported by this

electrically non-conductive alumina support to the extent that the claims do not preclude an outer layer (such as the pyropolymer layer disclosed in Hausler) as being in between the catalyst and support.

As to applicant's challenge of the examiner's statement under the guidelines of MPEP 2144.03 (Reliance on the Common Knowledge in the Art or "Well Known Prior Art), in reply the examiner asserts that at no time within the prosecution history of this application has Official Notice been taken. It is asserted that the combination of Wilkinson et al. and Hausler, along with the motivations for such a combination, are derived from the teachings of the references themselves. The statements made by the examiner were in response to applicant's salient arguments and not as a basis for a showing of obviousness.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

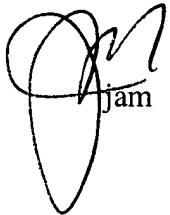
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



PATRICK JOSEPH RYAN  
SUPERVISORY PATENT EXAMINER